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LANSING

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Analysis of Enrolled House Bill 5321

Topic: Delivery of Notice to a Shared Common Address
Sponsor: Representative Emmons
Co-Sponsors: Representatives Huizenga, Vander Veen, Baxter, Wenke, Taub, Tobocman
Committee: House Commerce
Senate Economic Development, Small Business & Regulatory Reform
Date Introduced: October 18, 2005
Date Enrolled: March 2, 2006
Date of Analysis: Revised March 3, 2006

Position: The Department of Labor & Economic Growth supports the bill.

Problem/Background:

Michigan corporations are now burdened with significant expenses related to mailing notices of meetings, proxy statements, and annual reports to numerous shareholders by first class mail. The proxy rules of the federal Securities Exchange Commission permit publicly held corporations to meet their federal statutory obligation to deliver proxy statements and annual reports to shareholders sharing a common address by delivery of a single copy of such materials to the common address, including an e-mail address. This practice is known as "householding". Delaware's General Corporation Law has adopted this concept, and it is also under consideration for adoption by the Model Act.

Description of Bill:

This bill sets up a procedure where the corporation can notify multiple shareholders at a common address that they will only be sending one notice in the future. It also, sets up a procedure where the shareholder is able to object to the single notice and if they do object it requires the corporation to send an individual notice to that shareholder.

Arguments For:

The proxy rules under the Securities Exchange Act of 1934 permit publicly held corporations to meet their obligation to deliver proxy statements and annual reports to shareholders who share a common address (including an email address if electronic transmission is used) by delivery of a single copy of such materials to the common address under conditions. The practice is known as "householding." This section permits a corporation comparable flexibility to household the written notice of shareholder meetings as well as any other written notices, reports or statements required to be delivered to shareholders under the act, the corporation's articles of incorporation or bylaws. Ability to household such notices, reports or statements would not, of course, eliminate the practical necessity of delivering to a common address sufficient copies of any accompanying document requiring individual shareholder signature or other action, such as a proxy card or consent. This provision is currently under consideration to be included in the

Model Act. Section 233 of the Delaware General Corporation Law also adopts the concept of householding.

The bill makes it simpler to the corporation when it is sending notices to shareholders who have a common address. It also provides a means for the shareholders to object to the single notice for the common address and receive their own notification.

Arguments Against:

After the first delivery to a common address the shareholder will not receive an individual notice or report. If the shareholder subsequently wishes to opt out there is no clear procedure for doing so. If the shareholder does not object to the single notification initially the shareholder appears to be stuck with it until the shareholder's address changes.

Supporters:

Business Law Section of State Bar of Michigan

Opponents:

The only opposition to any of the bills in this package was to House Bill 5322. The Department of Labor & Economic Growth opposed House Bill 5322, because the problem that the bill was designed to solve had already been addressed in the expedited fee bills.

Other Pertinent Information:

This bill is part of a package of bills (House Bills 5315-23) developed by the Business Law Section of the State Bar of Michigan as part of a regular review of Michigan's corporation laws. These reviews occur roughly at four-year intervals.

Administrative Rules Impact:

The bill will have no administrative rules impact.

Fiscal Impact:

The bill will have no fiscal impact.